SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

TOWN OF GRISWOLD *v.* PASQUALE CAMPUTARO et al., SC 20061
Judicial District of New London

Zoning; Environmental Protection; Whether Appellate Court had Jurisdiction Over Appeal Absent § 8-8 (o) Certification; Whether Appellate Court Properly Ruled that § 8-8 (n) Hearing Required Before Trial Court Could Render Modified Stipulated Judgment. The plaintiff town brought a zoning enforcement action seeking to prohibit defendant Pasquale Camputaro from operating an asphalt plant, and that action was consolidated with Camputaro's zoning appeal challenging the town's cease and desist order. In 1997, the parties settled their disputes by way of a stipulated judgment. In 2015, after the town received complaints that the plant's operation did not comply with the stipulated judgment, the substituted defendant, the executor of Camputaro's estate, filed a motion to cite in American Industries, Inc., as a defendant. That motion was scheduled to be heard at the November 23, 2015 short calendar, and the calendar was posted on the Judicial Branch website. On November 12, 2015, the parties filed a joint motion to open and modify the stipulated judgment. Practice Book § 11-15 provides that "no . . . matters" shall be assigned to the short calendar hearing unless filed at least five days prior to the date of the hearing. The trial court, however, granted the defendants' request to be added to the November 16, 2015 short calendar in order to expedite judicial approval of the modification. At that hearing, the court opened the judgment, granted the motion to cite in, and accepted the modification to the stipulated judgment. Thereafter, two individuals filed motions to intervene pursuant to General Statutes § 22a-19 (a), which permits any person to intervene to raise environmental issues in an existing judicial review of an agency action. The court denied the motions as untimely, and the intervenors appealed. The defendants argued that the appeal was jurisdictionally defective because the intervenors failed to obtain certification to appeal from the Appellate Court before appealing the judgment in the zoning appeal, as required by General Statutes § 8-8 (o). The Appellate Court (177 Conn. App. 779) disagreed, concluding that it had jurisdiction over the appeal because the intervenors' right to intervene in the zoning enforcement action was inextricably intertwined with the zoning appeal. The court reversed the judgments denying the motions to intervene, concluding that the trial court violated the rules of practice by granting the request for an

expedited hearing when the defendants failed to provide a factual basis for expediting the proceedings. It also determined that because the would-be intervenors were not notified of the change in the date of the short calendar hearing, their right to notice was violated such that they were deprived of their right to (1) participate in the hearing on the approval of the modification to the stipulated judgment pursuant to General Statutes § 8-8 (n), which requires the trial court to conduct a public hearing before deciding whether to approve a proposed settlement of a zoning appeal, and (2) file motions to intervene in a pending action pursuant to § 22a-19 (a). The Supreme Court granted the defendants certification to appeal, and it will decide whether the Appellate Court properly concluded that (1) it had subject matter jurisdiction to consider the intervenors' appeal, (2) a hearing pursuant to § 8-8 (n) was required to be held by the court before it rendered the modified judgment, and (3) the trial court violated the rules of practice by rendering the modified judgment.

IN RE TAIJHA H.-B., SC 20151
Judicial District of New Haven

Termination of Parental Rights; Indigency; Whether Appellate Court Properly Dismissed Appeal from Termination Judgment on Grounds that (1) Attorney Filed Appeal Prior to Making Determination as to Whether Appeal had Merit in Contravention of Practice Book § 79a-3 (c), and (2) Procedure Set Forth in *Anders* v. *California* is Inapplicable in Termination Proceedings. The trial court rendered judgment terminating the respondent mother's parental rights in her child. Attorney James Sexton was appointed an "appellate review attorney" pursuant to Practice Book § 79a-3, which governs appeals by indigent parties in child protection matters. Section 79a-3 (c) provides: "(1) If the appellate review attorney determines that there is merit to an appeal, that attorney shall file the appeal . . . .(2) If the reviewing attorney determines that there is no merit to an appeal, that attorney shall make this decision known to the judicial authority [and] to the party . . . ." Sexton filed an appeal from the judgment terminating the mother's parental rights. Subsequently, he filed a motion to withdraw in the trial court in which represented that he was unable to find any nonfrivolous issues to raise on appeal. Additionally, he urged that the trial court follow the procedure set forth in *Anders* v. *California*, 386 U.S. 738 (1967), in determining whether the mother was entitled to replacement counsel. *Anders* sets forth the procedure to be followed when appointed counsel

concludes that an indigent criminal defendant's appeal is wholly frivolous and wishes to withdraw from representation. Under *Anders*, before counsel may withdraw, he or she must provide the court and the defendant with a brief outlining anything in the record that might support the appeal. Thereafter, the court, having conducted its own independent review of the entire record, may allow counsel to withdraw if it agrees with counsel's conclusion that the appeal is without merit. DCF objected, citing *In re Isaiah J.*, 140 Conn. App. 626, cert. denied, 308 Conn. 926 (2013). In that case, the Appellate Court rejected a parent's claim that she was entitled to *Anders*-like judicial review of appointed counsel's determination that her appeal from a termination judgment was without merit, observing that a parent's right to the effective assistance of counsel in a termination of parental rights proceeding is not rooted in the federal or state constitutions. The trial court granted Sexton's motion to withdraw, but declined to follow the *Anders* procedure, and Sexton amended the pending appeal to challenge that ruling as well. The Appellate Court summoned the parties on its own motion to address whether the appeal should be dismissed on the grounds that the appeal "was not properly filed pursuant to P.B. § 79a-3 (c) and the procedure set forth in [*Anders*] is not applicable to the withdrawal of an appellate review attorney in child protection proceedings. [Citing *In re Isaiah J.*, General Statutes § 45a-717 (b) and Practice Book § 79a-3 (c)]." Following a hearing, the Appellate Court dismissed the appeal. The Supreme Court granted the mother certification to appeal, and it will decide whether the Appellate Court properly dismissed the appeal on the grounds that (1) it was not properly filed pursuant to § 79a-3 (c), and (2) the procedure set forth in *Anders* is not applicable in the context of termination of parental rights proceedings.

The Practice Book Section 70-9 (a) presumption in favor of coverage by cameras and electronic media does not apply to the case above.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

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